

REMARKS

Status of the Prosecution:

Claims 1-10 are pending and under examination. Claim 7 is amended herein to achieve consistency throughout the claims. Applicant respectfully asserts that the amendment introduces no new matter.

The Claims are Patentable Over Bois in View of Tomic

Claims 1-10 stand rejected as allegedly unpatentable under 35 U.S.C. § 103(a) over Bois (U.S. Patent No. 6,085,491) ("Bois") in view of Tomic (U.S. Patent No. 6,386,760) ("Tomic"). Applicants respectfully traverse the rejection.

The Office Action alleges that Bois discloses a strip that is sealed to the sides of a bag, the surface of said strip allegedly reads on the flange of the instant claims. The Office Action further contends that Bois teaches that the strips can be complementary male and female shapes and that the use of such complementary components is known in the art. The Office Action concedes that the Bois does not teach a body of the fastener free for movement relative to the substrate, as is required in the present claims. According to the Office Action it would have been obvious to one of skill in the art to combine the teachings of Bois with the teachings of Tomic to arrive at the claimed invention. Tomic is alleged to teach a fastener which is free for movement relative to the substrate, by allegedly providing a strip that ensures that the inner surfaces of the sealing flanges do not bond together during heat sealing.

Even assuming *arguendo* that Tomic teaches a fastener in which a portion of one of the flanges (28) of a zipper is prevented by a non-sealing layer (31, in figures 2a, 3a, etc) from becoming attached to a substrate (14) forming a wall of the bag during bag manufacture, the fastener of Tomic remains unattached to the substrate in the region of the non-sealing layer right through to the finished bag. The flange having the non-sealing layer remains unattached to the substrate in the region of the non-sealing layer even after the finished bag has subsequently been opened. This feature is *crucial* to the Tomic bag, as it allows a portion of the substrate (between regions of attachment to the respective profile flanges (26, 28) formed by third and second sealing layers (38, 33)) to form a tear region (52) which provides

a tamper-evident feature (50,51) in the finished bag. In other words, the tamper-evident feature is formed by preventing the substrate (14) from bonding to its "own" profile flange (28) and ensuring that it bonds to the opposite flange (26).

Closer inspection of figures 2a, 2b, 3a etc of Tomic that, if the non-sealing layer (31) were to have formed a seal with the substrate (14) during the manufacture, the tamper-evident feature (50, 51) would not be accessible upon separation of the zipper profiles (22, 24) when opening the bag. In such circumstances, the temper-evident feature would of course be between two portions of the bag wall attached to the same zipper profile flange (28). Such an arrangement would clearly not provide any temper-evident function and thus would defeat the object of the teaching of Tomic.

Thus, since Bois as has been conceded, does not teach or suggest any body of a fastener which is free for movement at all, and Tomic does not teach or suggest the limitation of the method of claim 1 of Applicant's invention wherein the fastener is *first* attached to the substrate so as to leave the body of the fastener free for movement relative to the substrate, **and** the fastener is *subsequently* attached to the substrate so as to seal the substrate to the fastener body. Because the proffered combination of references does not teach or suggest each and every limitation of the claimed invention, the invention is patentable over the combination.

Further, the prima facie case also fails because in addition to the above, the combination of Bois and Tomic fails to disclose any apparatus comprising means for attaching lengths of fastener to a substrate to leave a body of the fastener free for movement relative to the substrate, nor does it disclose a pair of sealing jaws for subsequent sealing of the body to the substrate. Indeed, Tomic teaches *entirely* away from any such steps or features as it teaches that the unattached region (31) of the zipper flange (let alone a fastener body portion) is not at any stage in the process for manufacture of the bag attached to the substrate to which a sealing portion of the flange has earlier been attached.

Any modification of Tomic which would lead to the initially unattached portion of one zipper profile subsequently becoming attached to the substrate would, of course, be totally contrary to and inconsistent with the teaching of Tomic. Such modification would

defeat the whole purpose of what Tomic teaches. Such modification, even if undertaken can not be deemed obvious through hindsight.

Still further, the combination of Bois and Tomic would not be obvious because, as the Office Action states, Bois does not provide a fastener body which is free for movement relative to a substrate. Whereas this feature is entirely absent from Bois, it is essential to Tomic. Yet the combination would result in defeating the essential purpose of Tomic. Thus Tomic and Bois are incompatible; it could it not be obvious for the skilled person to combine them. The skilled artisan would not be motivated by the references themselves to combine the teachings with an expectation of success to arrive at Applicant's invention.

The examiner also alleges that it would have been obvious to provide Bois with a fastener according to Tomic and so prevent the flanges of the fastener of Bois from bonding together during the sealing process. Rejection on this ground is also traversed. As explained above, it could not be considered obvious to combine Bois and Tomic in any way; there would certainly be no reason to combine the teachings of the documents in this way because, contrary to the examiner's assertion, there would be no reason to attempt to prevent the zipper flanges of Bois from bonding together during the sealing process. In Bois (see figure 9), the zipper flanges (insofar as they are present at all) are each bonded to a respective bag wall and, provided that a suitable bonding temperature and pressure are used, no bonding of the zipper flanges would take place. Indeed, as is evident from figure 9 of Bois, such bonding could *only* occur upon complete melt-down of the Bois fastener under gross over-application of heat and pressure. Moreover, the only reason why it is desired in Tomic to prevent one flange from bonding to the substrate with which it is brought into contact is that the substrate is deliberately bonded to the opposite flange in order to form the tamper-evident feature. Thus to combine these two contrasting teachings would negate the whole essence of the Tomic disclosure, as explained in detail above. Bonding to the flange with which bonding is prevented would ruin the tamper-evident feature which Tomic provides.

In any event, the non-sealing layer (30) in Tomic does not prevent bonding together of the zipper flanges but rather bonding of the substrate (14) to part of one flange. In contrast, in Bois, the zipper profiles are simply bonded to their respective substrate sheets. There is no tamper-evident feature and *no need or desirability to prevent bonding* of either

DOCKET NO.: THOM-0022 (RA/P301529US)
Application No.: 10/088,042
Office Action Dated: October 1, 2004

PATENT

sheet to any part of the respective zipper profile. In particular, there is no reason whatever in Bois to prevent bonding of any part of either profile to its respective substrate and therefore no incentive to look to Tomic for a teaching to do so. If bonding to the substrates were prevented, the integrity of the final bag in Bois would be compromised.

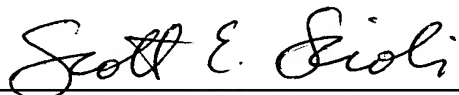
Accordingly, the *prima facie* case must fall and the rejection under 35 U.S.C. § 103(a) must be withdrawn. Applicants respectfully request favorable reconsideration in view of the above.

Conclusion:

Applicant respectfully asserts that the claimed invention is distinguished over the cited art and that all claims are in condition for allowance. An early and favorable Action in that regard is earnestly solicited. Applicant further asserts that this amendment and the remarks herein are fully responsive to the outstanding Office Action. The examiner is invited to address any outstanding issues prior to allowance with the Applicant's undersigned representative who may be reached at 215-557-5986 or by facsimile at 215-568-3439.

Respectfully submitted,

Date: February 1, 2005



Scott E. Scioli
Registration No. 47,930

Woodcock Washburn LLP
One Liberty Place - 46th Floor
Philadelphia PA 19103
Telephone: (215) 568-3100
Facsimile: (215) 568-3439